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DEPT FOR AF A A/S CARTER, SE GRATION, AF/SPG, AF/E, IO, PRM
NSC FOR MGAVIN AND HUDSON
DEPT PLS PASS USAID FOR AFR/SUDAN, USAID/W DCHA SUDAN
ADDIS ABABA ALSO FOR USAU

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SUBJECT: ADDING INSULT TO INJURY - GNU DEMANDS EXORBITANT SEVERANCE
PAY FROM EXPELLED NGOS

REF: A) KHARTOUM 405
B) KHARTOUM 318
C) KHARTOUM 313
D) KHARTOUM 311
E) KHARTOUM 306
F) KHARTOUM 299

SUMMARY

11. (SBU) BEGIN SUMMARY. On March 22, the Government of National Unity (GNU) Ministry of Labor issued a "ministerial decree," arguing that expelled non-governmental organizations (NGOs) had infringed on laws and regulations regarding the humanitarian work in Sudan (an accusation used by the Humanitarian Aid Commission to justify its expulsion of 13 INGOs), and ordering the expelled agencies to pay an additional six months of severance pay to local Sudanese staff. NGOs estimate that paying an additional six months on top of the severance required by law would cost NGOs approximately \$60 million dollars. Noting the potential precedent the payments would set, partners encourage a swift and coordinated donor response. Post continues to engage with UN staff and NGOs at field and headquarters levels and monitor the situation closely. END SUMMARY.

THE GNU EXPANDS ITS HORIZONS OF HARASSMENT AND EXTORTION

12. (SBU) In a March 19 letter from the GNU Ministry of Labor, the Sudanese government cited the expelled NGOs for infringing on laws and regulations controlling the humanitarian work in Sudan and decreed that the expelled agencies pay an additional six months of severance pay, due to aggressive termination of Sudanese staff. (NOTE: According to NGOs, it remains unclear whether the payment applies to all staff, including staff employed on a fixed-term basis or staff receiving ad hoc incentives, and the aid agencies are afraid to ask for clarification. END NOTE.) Since early March, the GNU Humanitarian Aid Commission (HAC) also has insisted that organizations provide severance funds to the GNU HAC for distribution to local staff and encouraged Sudanese staff members to demand additional severance pay from the organizations. As a result, NGOs report a growing hostility from national staff towards managers, both international staff members and national field coordinators acting on behalf of the partners in remote locations. Fueled by the GNU HAC and Labor Office, some national staff believe that managers are deliberately resisting payment of the additional severance because the latter are "thieves" or are reluctant to pay what the staff believe the organizations rightly owe them. (NOTE: Field staff report a general presumption from the GNU HAC and national staff that the NGOs are infinitely resourced and paying the

additional severance will have little consequence. END NOTE.)
Noting the potential precedent and lasting impact such a decision could have on remaining humanitarian, transition and development operations throughout Sudan, implementing partners encourage a swift and coordinated response, particularly to prevent individual organizations from making decisions that will impact the entire foreign assistance community throughout Sudan for the near future.

13. (SBU) The INGO Steering Committee estimates that the GNU decision will cost NGOs a total \$60 million for severance payments (in addition to an estimated \$40 million in seized and stolen assets.) Some NGOs report that the new requirements will render their organizations insolvent resulting in forcing them to file for bankruptcy in Sudan. This would entitle the organizations to sell their program assets to pay off debts. (NOTE: This plan is problematic because the GNU continues to hold many of the project assets that organizations would need to sell in order to pay severance pay and other program close-out costs. UN DSRG Ameerah Haq told CDA Fernandez on March 26 that Sudan has now agreed to return at least some of the seized assets as soon as next week, over the objections of HAC, as a small concession to the UN. END NOTE.)

14. (SBU) On March 23, the 13 expelled international organizations submitted a letter of appeal to the GNU HAC Registrar Ahmed Adam, protesting the GNU decision and highlighting the NGOs rights under current Sudanese law. In addition, the organizations cited the 1997 Sudanese Labor Law, which states that dissolution or liquidation of the entity is sufficient grounds for cancelling the contract of an employee according to the normal notice period, and does not constitute aggressive termination. Finally, the NGOs underscored a commitment to compensate staff members for the abrupt loss of

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employment in accordance with the 1997 Labor Law and individual organizational policies. They asked for GNU assistance in enabling the groups to make such severance payments without further delay. The March salaries are due for payment to local employees in the coming days. However, although NGOs are prepared to pay the month's salary, GNU HAC staff at each agency are refusing the organizations' efforts to pay staff, believing that the GNU Ministry of Labor decision is legally binding. While expressing a formal but polite appeal to the GNU, NGOs were also very clear that the termination of their program operations was beyond the organizations' control, as it had been taken in direct response to an order from the Sudanese government. Following receipt of the appeal, Adam will decide whether to implement the GNU Ministry of Labor decree or to overturn the ruling. (NOTE: In a conversation with the USAID Legal Advisor, a prominent Sudanese attorney agreed that that additional six-months severance payment is not consistent with the Labor Act of 1997 as applied to this case. He explained that the termination was an "act of state" and not an illegal termination as asserted by the Ministry of Labor. He added that, although it pre-dates the current labor law, the termination of workers in the brewing industry in 1983 when the Government banned alcoholic beverages may provide some precedent. The attorney was not very optimistic, however, that an appeal would succeed, and he admitted that Sudanese courts, while generally adhering to rule of law in cases involving two private parties, are unlikely to rule against the GNU. END NOTE)

USAID STAFF MEET WITH NGO STEERING COMMITTEE

15. (SBU) On March 23, USAID staff met with Mark Simmons, chair of the NGO Steering Committee to discuss the current situation and USG efforts to assist the organizations. According to Simmons, the GNU letter directly accused NGOs of "infringement on laws and regulation controlling the humanitarian work in Sudan" and noted that the infringement led to termination of contracts. (NOTE: Because the letter directly accused NGOs of breaking Sudanese law, the organizations decided to fight the decision as they believe that to stay silent would have been equal to admitting guilt when the NGOs do not think they have violated Sudanese law. In addition, partner staff note that the letter was the first occasion of the GNU's written accusations against the NGOs. END NOTE.)

¶6. (SBU) NGOs argue the expulsions were a political rather than a legal decision. On March 23, international media noted NGO reports that the expulsions were pre-planned by the GNU, using the March 4 International Criminal Court (ICC) announcement as a smoke-screen. Simmons pointed out that several of the expelled organizations had gender-based violence programs and had already been subjected to months of GNU harassment regarding those projects. Simmons also highlighted instances of the GNU HAC contacting Sudanese staff of the expelled NGOs to encourage the employees to ask for an additional six months of severance pay from the organizations. In addition, NGOs report that GNU officials have harassed two lawyers representing the organizations, and one of the lawyers departed Sudan as a result.

¶7. (SBU) According to NGO estimates, the new GNU policy of requiring NGOs to provide an additional six months on top of the base severance payment (in some cases up to 12 months of severance pay) will cost the NGOs and international donors up to \$60 million for severance packages. This is in addition to approximately \$40 million they estimate in lost program assets, if they are not returned. (NOTE: Preliminary estimates by USAID indicate that, based on the figures provided by NGOs in the field, the severance pay decree could cost USAID upwards of \$10 million. USAID continues to conduct an analysis on the numbers, and will share additional information as it becomes available. END NOTE.)

¶8. (SBU) Under Sudanese law, the humanitarian assets taken from NGOs must be transferred for humanitarian work. Although the GNU HAC mandate includes humanitarian work, USAID staff note concerns that the close links between the GNU HAC and GNU security agencies mean that millions of dollars of humanitarian assets could be used to support the GNU security services. Indeed, USAID staff caution that GNU HAC has become so closely linked to GNU National Security, particularly since early March, that a firm distinction would be very difficult to make. USAID staff are also concerned that much of the equipment taken by HAC is licensed by the U.S. Department of Commerce Bureau of Industry and Security (BIS). This includes such equipment as computers and software programs, GPS equipment, satellite phones and radios. BIS requires that such licensed equipment be removed from the country or destroyed unless BIS

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approves its transfer. Post will be monitoring very closely to see if Minister Ahmed Haroun's assurance today to Ameerah Haq on this issue has any merit.

¶9. (SBU) In addition to holding NGO program assets, GNU HAC officials continue to demand that departing organizations deliver all severance pay to the GNU HAC, which will then transfer the funds to Sudanese staff members. (NOTE: USAID staff and implementing partners are understandably skeptical and concerned about paying tens of millions of dollars to Sudanese government officials, who have not necessarily lived up to their commitments to date. END NOTE.)

WHAT IS A DONOR TO DO?

¶10. (SBU) Although NGOs understand that the international donor community is also somewhat paralyzed and dependent on the latest developments in an ever-changing situation, the organizations are looking to the donors for additional support, advocacy, and advice. If NGOs begin to pay severance pay, some NGOs anticipate problems delivering the severance to local staff in remote locations. NGOs have asked U.N.-African Union Mission in Darfur (UNAMID) to deliver the money; however, UNAMID has declined to assist. As a result, NGOs ask that international donors encourage the UN to facilitate or assist with such transfers. .

¶11. (SBU) Given the current situation, NGO staff hope to see the international donor community push back on the GNU's exorbitant severance pay demands, negative rhetoric, seizure of assets, and its control of remaining programs and partners. The NGO Steering Committee suggested that donors issue a public statement confirming

that the Minister of Labor's decree is not legally binding, thereby removing some of the pressure from NGO staff subjected to increased harassment and pressure from Sudanese colleagues. Finally, NGO staff hope to see the international community advocate for the much-needed humanitarian programs and space throughout Sudan.

(NOTE: Because the UN's "Track One" does not officially conclude until April 3, donors must use caution regarding discussions with NGOs so as not to give the appearance of moving ahead too quickly. END NOTE.)

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COMMENT
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¶12. (SBU) The question remains whether the international community and donors wish to continue supporting the life-saving operations in Sudan, or whether the operating environment is too treacherous and uncertain, and void of respect for humanitarian space and operations, to effect any positive change. If the international community and donors come to the latter conclusion, are they prepared for the likely steady deterioration in the humanitarian environment that will occur in Darfur and elsewhere in Sudan following the cut-off of such life saving assistance? In recent days, the tone of engagement has shifted and NGO staff now find themselves subjected to intra-staff hostility rather than external forces including GNU security officials and other external actors. (NOTE: Thanks to ongoing inflammatory rhetoric, the GNU authorities have found alternative ways to continue to pressure NGO staff--now harassment is an "inside job" rather than one that requires direct engagement from government agencies. END NOTE.) Should the international donor community wish to stay engaged in Sudan, the March 19 GNU letter offers an opportunity for international governments to engage on behalf of their citizens and their long-standing, well-funded aid operations. When the Sudanese government confiscates an American staff member's passport or seizes a USAID partner's office and communication equipment, it is taking property that belongs to the US government. If donors wish to stay in Sudan, the international community must develop conditions and standards that the GNU has to meet and continue to abide by, both for the safety of the aid workers, as well the people the agencies serve. Just such a question served as the topic of discussion in an initial core group donor meeting between Haq and key donors (including the U.S.) on March 25 (septel).

¶13. (SBU) Most tragically, the GNU's latest maneuver to essentially extort money from well-meaning donors and international organizations further denies the people in marginalized areas of Sudan \$100 million dollars in life-saving health care, food, clean water, nutrition, and shelter that will be used to pay what is essentially a form of blackmail. While the regime has now softened

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its tone and taken some very minor steps back from its decision, the negative fallout of the expulsions continues.

FERNANDEZ